

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
CIVIL MINUTES

Case Title: Sheryl Ann Calalang **Case No.:** 18-25631 - C - 13
Docket Control No. MWM-317
Date: 10/02/2018
Time: 1:30 PM

Matter: [14] - Motion for Relief from Automatic Stay [MWM-317]
Filed by Creditor 6801 Leisure Town Road Apartments Investors (Fee
Paid \$181) (eFilingID: 6359590) (kvas)

Judge: Ronald H. Sargis
Courtroom Deputy: Janet Larson
Reporter: Diamond Reporters
Department: C

APPEARANCES for:

Movant(s) :

(by phone) Creditor's Attorney - Wendy Smith

Respondent(s) :

Trustee's Attorney - Neil Enmark

CIVIL MINUTES

Motion Granted

Findings of fact and conclusions of law stated orally on the record

The court will issue an order.

Local Rule 9014-1(f)(2) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2018. Fourteen days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to

the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. No opposition was presented at the hearing.

The Motion for Relief From the Automatic Stay is granted.

6801 Leisure Town Road Apartments Investors and its Successor in interest, MG Properties Group ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6801 Leisure Town Road, Unit 113, Vacaville, CA, 95688.

As noted in both Movant's Motion (Dckt. 14) and the Chapter 13 Trustee's Non-Opposition (Dckt. 21), Movant was granted a relief from stay with respect to this same property in Debtor's previously bankruptcy proceeding (Case No. 18-24990) on September 6, 2018. (Dckt. 33). The court granted relief from the stay in the previous bankruptcy proceeding based on the following:

(1) Movant leased residential real property to the Debtor.

(2) Prior to the filing of the petition, Movant obtained a judgement against Debtor in an Unlawful Detainer action with respect to this property on July 31, 2018 in Solano County Superior Court, Case NO. FCM160860 and provided the required notice to the Debtor, terminating Debtor's right to possession.

(3) The Debtor no longer had an interest in the subject property.

The same facts support Movant's pending motion.

Given the judgment in the Unlawful Detainer action, Debtor's right to possession has terminated and there is cause to terminate the automatic stay. *In re Windmill Farms, Inc.*, 841 F.2d 1467 (9th Cir. 1988); *In re Smith*, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The court shall issue a minute order terminating and vacating the automatic stay to 6801 Leisure Town Road Apartments Investors and its Successor in interest, MG Properties Group, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The Stay is modified to permit the Movant to seek possession of the property. No fees and costs are awarded. The fourteen day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.